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Attorneys for Creditor

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

In re MISTY LEE ROBERTS	)	Case No. 2:23-bk-10019-BPH
JAMES DARIN CLEMONS	)	<b>RESPONSE TO DEBTOR'S</b>
	)	<b>OBJECTION TO PROOF OF CLAIM</b>
Debtors.	)	<b>AND REQUEST FOR HEARING</b>
	)	
	)	<b>NOTICE OF HEARING</b>
	)	<b>DATE: JUNE 27, 2023</b>
	)	<b>TIME: 9:00 AM</b>
	)	<b>LOCATION: ELLA KNOWLES</b>
	)	<b>COURTROOM, 4<sup>TH</sup> FLOOR ROOM</b>
	)	<b>4805, JAMES F. BATTIN UNITED</b>
	)	<b>STATES COURTHOUSE, 2601 2<sup>ND</sup></b>
	)	<b>AVENUE NORTH, BILLINGS,</b>
	)	<b>MONTANA</b>

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Creditor, G. Barclay Corbus ("Creditor"), by and through his attorneys of record, Jackson, Murdo & Grant, P.C., respond to Debtor's Objection to Proof of Claim filed at ECF. No. 38, in the above-captioned case. The Creditor filed a timely and supported proof of claim, the value of which may be determined by this Court pursuant to 11 U.S.C. § 502(b), 11 U.S.C. § 502(c) or through an adversary proceeding. In support of this response, the Creditor informs the Court as follows:

**STATEMENT OF RELEVANT FACTS**

1. Creditor filed a First Amended Complaint and Jury Demand against Debtors on

November 5, 2020 (“Complaint”). The allegations of the Complaint include, but are not limited to, Debtors’ failure to repay various loans made to them by Creditor. Amend. Compl., DV-20-80, Nov. 5, 2020, Mont. Twenty-Second Judicial Dist. Court, attached hereto as Exhibit 1.

2. The Court granted a Pre-Judgment Writ of Attachment against Debtor’s real property located in Carbon County to secure payment of \$1,147,232.75, plus interest. Prejudgment Writ of Attachment, DV-20-80, April 7, 2021, Mont. Twenty-Second Judicial Dist. Court, attached hereto as Exhibit 2. This real property includes, but may not be limited to, all of the Debtor’s interest in 10 Dream Catcher Lane, Red Lodge, MT 59068, more particularly described as:

Parcel I

Lot 3, of Wallis Acreage Tracts, Plat No. 474, in Carbon County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 174221.

Parcel II

That part of Section 35, Township 6 South, Range 20 East, of the Principal Montanan Meridian, in Carbon County, Montana, described as Tract 21, Block 1, of Certificate of Survey No. 1427 Amended on file in the office of the Clerk and Recorder of said County, under Document No. 244471.

EXCEPTING therefrom that portion conveyed to Montana Department of Transportation by Bargain and Sale Deed, recorded September 23, 2020, under Document 383188.

and 410 McGillen Ave., Red Lodge, MT 59068, more particularly described as:

Lot 10, Block 30, of Second Addition to Red Lodge, in the City of Red Lodge, Carbon County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

3. The Statutory requirement to provide notice of the Prejudgment Writ of Attachment was completed by recording the same in the Real Property Records of Carbon County at Doc # 386077, on April 8, 2021. See Exhibit 2.

4. Partial Summary Judgment was granted as to Count I of the Complaint in favor of

Creditor for the amount of \$565,413.91. Final Judgment on Count I of Plaintiff's First Amended Complaint, DV-20-80, March 21, 2022, Mont. Twenty-Second Judicial Dist. Court, attached hereto as Exhibit 3. Creditor also received an award of attorney's fees.

5. The remaining six counts asserted in the Complaint remain unresolved and are awaiting disposition. This includes but is not limited to the Creditors' Breach of Contract claims against Debtors in the amount of \$1,147,232.75 as of October 1, 2020, with interest accruing at the rate of 10% per annum. Said claims continue to be secured by the Court's prejudgment attachment.

### **ARGUMENT**

#### **1. This Court has authority to liquidate the Creditors' damages by contested matter or adversary proceeding.**

An objection to a proof of claim results in a contested matter to be heard by the Bankruptcy Court. Pursuant to 11 U.S.C. § 502(b), after an objection to a proof of claim is made, "the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition[.]" Furthermore, 11 U.S.C. § 502(c)(1), permits the Court to estimate for purposes of allowance of a claim "any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case[.]" In the alternative, the resolution of the disputed claim may be resolved by the filing of an Adversary Proceeding.

In the present matter, the underlying Montana District Court has already determined that there are sufficient facts to award the Creditor Prejudgment Attachment, an extra ordinary remedy. Upon information and belief, the Debtor filed this bankruptcy case to stay the Montana District Court's final judgment as to Creditor's damages arising from Counts two through seven of its Complaint. Creditor is prepared to provide substantial testimony supporting his allegations

and justifying his demand for damages. Pursuant to F. R.B.P. 3001(f), “[a] proof of executed and filed in accordance with [the Rules of Bankruptcy Procedure] shall constitute prima facie evidence of the validity and amount of the claim. It is the objector’s responsibility to introduce sufficient evidence to rebut the presumption of validity.

WHEREFORE Creditor, G. Barclay Corbus respectfully requests:

1. This Court set this matter for hearing;
2. Creditor’s claim be allowed; and
3. For such other further relief as the Court deems just and proper.

DATED this 25<sup>th</sup> day of May, 2023.

/s/ Burt W. Ward  
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Attorney for Creditors

CERTIFICATE OF MAILING

I certify under penalties of perjury, that on May 25, 2023, I served a true and correct copy of the foregoing RESPONSE TO DEBTOR'S OBJECTION TO PROOF OF CLAIM AND REQUEST FOR HEARING on the counsel listed below via electronic filing with the United States Bankruptcy Court, Montana District and/or by mail on the following parties:

Andrew W. Pierce  
PEIRCE LAW FIRM, PC  
Attorney for Debtors  
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Robert Drummond  
Chapter 13 Trustee  
[trustee@mtchapter13.com](mailto:trustee@mtchapter13.com)

United States Trustee's Office  
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/s/ Burt W. Ward  
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